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A “How To” Guide for Incorporating Global and Comparative Perspectives into the Required Professional Responsibility Course

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**A “HOW TO” GUIDE FOR INCORPORATING GLOBAL AND
COMPARATIVE PERSPECTIVES INTO THE REQUIRED
PROFESSIONAL RESPONSIBILITY COURSE**

LAUREL S. TERRY*

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I. INTRODUCTION

We are not alone.

This is one of the messages I try to convey in my required professional responsibility course. In my view, it is important for U.S. law students to realize that:

- the U.S. legal profession is not the only legal profession in the world;
- lawyers around the world face a number of similar issues;
- despite the similarity of many legal ethics issues, not all countries and lawyers have adopted the same answers, rules and analysis that is used in the U.S.;
- we live in an increasingly small world in which regulators and lawyers around the world talk to one another regularly, and, as a result, initiatives and rules from other countries may be introduced into the U.S.; and
- the legal ethics rules from one jurisdiction may have an effect in another jurisdiction.

For all of these reasons, twenty-first century U.S. law students need to be exposed to global and comparative perspectives in their required legal ethics course.

Section II of this article includes a more detailed explanation about why it is important to include global and comparative perspectives in all required basic professional responsibility courses. If you already agree with this point, you may want to proceed directly to Section III. Section III demonstrates how you can introduce global and comparative perspectives into your professional responsibility course without taking up much class time and without engaging in an inordinate amount of class preparation time.

II. WHY GLOBAL AND COMPARATIVE PERSPECTIVES ARE RELEVANT IN A PROFESSIONAL RESPONSIBILITY COURSE

A. *Globalization Affects Clients*

The first reason why global and comparative perspectives are relevant in a professional responsibility course is because globalization is a phenomenon that affects clients. This is true regardless of whether one is speaking about business clients or individual clients.

As shown in Table 1, U.S. imports and U.S. exports have increased dramatically in the last decade.¹ As a result, U.S. business clients are increasingly likely to interact with suppliers, distributors, consumers, or

1. Laurel S. Terry, *U.S. Legal Ethics: The Coming of Age of Global and Comparative Perspectives*, 4 WASH. U. GLOBAL STUD. L. REV. 463, 492 tbl. 1 (2005).

owners located outside the U.S. Because foreign lawyers are likely to be involved in many of these transactions, U.S. lawyers are increasingly likely to interact with foreign lawyers. In light of this fact, it is important for U.S. lawyers and thus law students to understand some of the similarities and differences among U.S. and non-U.S. lawyers, particularly with regard to ethics issues.

TABLE 1: U.S. INTERNATIONAL TRADE IN GOODS AND SERVICES

	1960	1974	1998	2004
Exports	\$25.9 billion	\$120.9 billion	\$932.6 billion	\$1.15 trillion
Imports	\$22.4 billion	\$125.2 billion	\$1.1 trillion	\$1.76 trillion

Globalization affects individual clients, as well as corporate clients. As a result of the growth in immigration to the U.S., more individual clients than ever are foreign-born.² For example, the 2000 U.S. Census recorded 31.1 million foreign-born residents, which was an increase of 57.4% compared to the 1990 Census.³ This increase occurred throughout the U.S.; the state with the highest percentage increase was North Carolina, which had a 288% increase between 1990 and 2000 with respect to its foreign-born population.⁴ These foreign-born U.S. residents are more likely to be involved in business deals that involve another country, or to have inheritance or family matter issues that involve another country. Thus, U.S. lawyers who represent individual rather than corporate clients are also increasingly likely to encounter lawyers from other countries.

B. *Lawyers and Law Firms Have Gone Global*

Globalization has also affected U.S. law firms and the lawyers who work in these firms. An increasingly large number of U.S. law firms now operate outside of the U.S., and an increasingly large number of foreign firms operate inside the U.S. For example, in the 2006 listing of *The American Lawyer's* "Global 100," all ten of the world's largest law firms had offices in ten or more countries.⁵ Although the law firms that rank eleven through twenty in size

2. *Id.* at 493 tbl. 2. Table 2 showed significant increases between the 1990 Census and the 2000 Census in the foreign-born population of California, Wyoming, and Missouri, which were the states with the highest, lowest and, respectively, mid-point number of foreign-born residents. *Id.* In each of these states, there was a significant percentage increase of foreign-born residents during the ten-year period. *Id.* California had a 37.2% increase in its foreign-born residents, Wyoming had a 46.5% increase, and Missouri had an 80.8% increase in its foreign-born residents. *Id.*

3. *Id.*

4. Migration Information Source-Data Tools, available at <http://www.migrationinformation.org/DataTools/MigrationInformationSource-ACS-2005-PercentChangeForeignBorn.xls> (last visited May 25, 2007). Additionally, see *id.* for rankings on the percentage of increase of the number of foreign born residents in each state from 1990 to 2000.

5. *The Global 100*, AM. LAW., Oct. 2006, at 139 (providing a "Most Lawyers" chart).

don't have offices in ten or more countries, all of them have foreign branch offices.⁶ Another striking statistic is the fact that "six of the world's ten highest-grossing law firms had more than 50% of their lawyers working in countries outside of the firm's home country."⁷ Moreover, it isn't just the top ten or twenty U.S. law firms that have foreign offices. Carole Silver has documented the dramatic growth in the foreign offices of sixty U.S.-based law firms.⁸

U.S. trade statistics confirm that U.S. lawyers are exporting out of the U.S. and foreign lawyers are importing into the U.S. more legal services than ever.⁹ As previously reported, in 2003, the U.S. exported \$3.376 billion in legal services and imported \$879 million.¹⁰ Because law firms have gone global, both the U.S. lawyers who work for these firms and the lawyers who interact with these global law firms are increasingly likely to encounter foreign lawyers. As future lawyers, it is important for U.S. law students to be familiar with the norms and ethics rules governing these foreign lawyers, as well as developments outside the U.S. that might affect U.S. lawyers and law firms with global practices.

C. *Globalization Has Changed the Manner in Which Legal Services Regulators and Experts Operate*

In addition to affecting lawyers and clients, globalization has affected the manner in which legal services are regulated. It is not uncommon for regulators inside and outside the U.S. to employ benchmarking and employ a comparative methodology in which they ask how a particular issue is treated in other countries.¹¹ One reason for this comparative methodology is because it is increasingly common for legal ethics regulators and experts to meet each other in person, at least periodically. The National Organization of Bar Counsel (NOBC), for example, includes U.S. and non-U.S. members, even though one might think of it as a domestic organization.¹² There are often foreign speakers

6. *Id.*

7. *Id.*; see also Terry, *supra* note 1, at 494–95, 494 tbl.4

8. Carole Silver, *Winners and Losers in the Globalization of Legal Services: Situating the Market for Foreign Lawyers*, 45 VA. J. INT'L L. 897, 916–20 (2005). For a group of forty-seven U.S. law firms with foreign branch offices in London, the average firm size in 1999 was twenty lawyers; five years later, in 2004, it was forty-four lawyers. *Id.* at 918–19. By 1999, a group of sixty U.S. law firms operated a total of 335 offices in forty-eight countries. *Id.* at 916.

9. Terry, *supra* note 1, at 494 tbl.3 (showing, for example, that between 1993 and 2003, U.S. exports of legal services grew 134% and imports grew 174%).

10. *Id.*

11. For a more extended discussion of this topic, see *id.* at 526–30. In that article, I assert that a "sea change" occurred in 1998 and that the hearings held by the ABA Commission on Multidisciplinary Practice marked the beginning of a new era of "global dialogue" about legal ethics issues. *Id.*

12. *Id.* at 510. The NOBC includes Canadian and Australian members. *Id.*

at the American Bar Association's (ABA) annual ethics conference.¹³ Legal ethics regulators and experts are increasingly invited to attend bar association meetings, where they have a chance to meet their counterparts.¹⁴

In addition to these increased personal contacts, the Internet, email, and the widespread use of English have made this benchmarking and comparative methodology easier to employ now than it used to be. Regulators can easily see each other's policies and can easily communicate with each other.¹⁵

Legal services regulators are also exposed to the views of legal ethics experts, who are increasingly knowledgeable about global and comparative issues. For example, U.S. law faculty (some of whom are legal ethics experts) are increasingly likely to be aware of global developments and comparative perspectives.¹⁶

Because legal services regulators increasingly take account of global initiatives and comparative approaches to a particular issue, it is important for the students in the required professional responsibility course to realize that developments outside the U.S. may be relevant to U.S. legal ethics issues. These students need to understand that it is no longer uncommon for U.S. legal services regulators and experts to adopt a methodology in which they ask how similar issues are handled in other countries or ask what global initiatives exist with respect to the issue in question.

13. *Id.* at 514.

14. The ABA, for example, has, on several occasions, invited representatives from other bar associations as speakers. *See* Terry, *supra* note 1, at 524. The International Bar Association recently sponsored a conference that included a panel session with Bill Smith, General Counsel of Georgia, and the Secretary General of the Council of Bars and Law Societies of Europe (CCBE) (which is the bar association of the European Union) discussing international disciplinary cooperation. *See* International Bar Association, Current Developments in the Cross-Border Discipline of Foreign Lawyers (Chicago, Sept. 21, 2006), <http://www.ibanet.org/chicago06/index.cfm> (last visited May 25, 2007). The Conference of Chief Justices has invited CCBE representatives to its meetings. *See, e.g., American Bar Association Annual Meeting—Atlanta, August 2004*, CCBE-INFO, Nov. 2004, at 5, available at http://www.ccbe.org/doc/Archives/n_10_en.pdf.

15. In my view, one cannot underestimate the importance of the fact that the staff of the ABA Center for Professional Responsibility now communicates regularly with individuals at the CCBE, the Law Society of England and Wales, the Law Society of Upper Canada, the Law Council of Australia, and the Law Society of New South Wales, Australia, among others.

16. *See* Terry, *supra* note 1, at 517–23 (attributing the increased global awareness of U.S. law faculty to a number of factors including: 1) an increase in the number of international courses and journals in the U.S.; 2) an increase in the number of foreign LL.M. students and the programs open to these students; 3) the cross-fertilization of education promoted by the ABA Central European and Eurasian Law Institute (CEELI) project and similar projects; 4) efforts to have cross-border dialogue and affiliations among accreditation and education associations, including the creation of ELFA, the European Law Faculties Association, and the Association of American Law Schools' (AALS) recent international initiatives; and 5) the creation of the EU's Socrates Mundus program, which funds affiliations of EU and non-EU (including U.S.) academic programs).

D. The Content of Lawyer Regulation Has Changed, with More Global Initiatives and More Questions about the Extra-Territorial Effect of Domestic Initiatives

There is an additional reason why it is important for U.S. law students to be aware of global professional responsibility issues. Not only has the *approach* of U.S. regulators changed, but the *content and source* of lawyer regulation is changing. Examples of these types of changes include the following:

1. There are an increasing number of global initiatives that directly or indirectly impact the U.S. law of lawyering.
2. It is increasingly common for U.S. legal ethics policies that we think of as “domestic” to have international implications that affect non-U.S. lawyers. U.S. regulators are increasingly likely to hear about these implications from foreign bars associations and foreign lawyers, which in turn affects U.S. policy.
3. It is increasingly likely that policies from other countries will affect U.S. lawyers. Sometimes these policies will directly affect (i.e., regulate) U.S. lawyers and law firms, and sometimes these policies may indirectly affect U.S. lawyers, by making a particular trend or result more likely.

The paragraphs that follow provide examples of each of these types of changes. In my view, students do not need to master the details of these developments, but they do need to know that developments such as these exist. Students need to understand that when they face an issue, it may not be enough to simply look for the state rule or state law on point—they may also have to look for national or global policies on point. Students also need to understand that domestic legal ethics policies—whether in the U.S. or elsewhere—may have consequences outside of that country.

The Financial Action Task Force (FATF) Gatekeeper Initiative is an example of a global initiative that has the potential to affect U.S. domestic regulation of lawyers. FATF is an intergovernmental body established to develop and promote anti-money laundering policies at the national and international level;¹⁷ it has more than thirty countries as members, including the U.S.¹⁸ The gatekeeper provisions of the FATF’s Consultation Paper required lawyers to break confidentiality and inform appropriate officials of their clients’ conduct and prohibited lawyers from notifying their clients that

17. See Financial Action Task Force (FATF), <http://www.fatf-gafi.org> (last visited May 25, 2007).

18. See *id.*; see also FATF, *FATF Members and Observers*, <http://www.fatf-gafi.org/> (select “About the FATF”; select “Members and Observers” in the left column) (last visited May 25, 2007).

they had done so.¹⁹ In 2003, the ABA, along with bar associations from Canada, the European Union (EU), and Japan, signed a Joint Statement responding to the Consultation Paper circulated by the FATF.²⁰ If the FATF's recommendations were successfully implemented by the U.S. government, this would dramatically change lawyer regulation in the U.S.

The General Agreement on Trade in Services (GATS) is another example of a global initiative that has the potential to affect U.S. state regulation of lawyers.²¹ The ABA recently adopted a policy statement that will permit it to respond to requests for comment from the cabinet-level Office of the U.S. Trade Representative regarding GATS Track 2 issues.²² GATS Track 2 concerns the GATS provision in which World Trade Organization members, including the U.S. government, agreed to consider developing "disciplines" (regulations) on domestic regulation in WTO Member States.²³ Such disciplines have the potential to affect U.S. regulation of lawyers. In addition to the GATS, there are a number of other free trade agreements that the U.S. has entered into that potentially have an impact on U.S. regulation of lawyers.²⁴ The Conference of Chief Justices recognizes the importance of these global initiatives for U.S. state regulation of lawyers, and now has an international agreements committee and has adopted a resolution that addresses these free trade agreements.²⁵

19. See FATF, *Financial Action Task Force on Money Laundering: The Forty Recommendations* 10 (Oct. 22, 2004), available at <http://www.fatf-gafi.org/dataoecd/7/40/34849567.PDF>.

20. See *Joint Statement by the International Legal Profession on the Fight Against Money-Laundering* (Apr. 3, 2003), http://www.ccbe.org/doc/En/signed_statement_030403_en.pdf.

21. See *General Agreement on Tariffs and Trade: Multilateral Trade Negotiations Final Act Embodying the Results of the Uruguay Round of Trade Negotiations*, 33 INT'L LEGAL MATERIALS 1125, 1167 Annex 1B General Agreement on Trade in Services (1994) [hereinafter GATS]. For additional information about the GATS and legal services, see Laurel S. Terry, *GATS' Applicability to Transnational Lawyering and its Potential Impact on U.S. State Regulation of Lawyers*, 34 VAND. J. TRANSNAT'L L. 989 (2001), revised at VAND. J. TRANSNAT'L L. 1387 (2002). See also American Bar Association, *Materials about the GATS and Other International Agreements*, <http://www.abanet.org/cpr/gats/home.html> (last visited May 25, 2007).

22. American Bar Association Standing Committee on Professional Discipline, *Recommendation 105* (Aug. 2006), available at <http://www.abanet.org/leadership/2006/annual/onehundredfive.doc>.

23. See GATS, *supra* note 21, at 1172–73. For additional information on GATS Track 2, see Laurel S. Terry, *But What Will the WTO Disciplines Apply To? Distinguishing Among Market Access, National Treatment and Article VI:4 Measures When Applying the GATS to Legal Services*, 2003 PROF. LAW. 83 (2003).

24. See, e.g., American Bar Association, *Other International Trade Agreements* (also known as "Free Trade Agreements" or FTAs), <http://www.abanet.org/cpr/gats/fta.html> (last visited May 25, 2007).

25. See, e.g., Conference of Chief Justices, *Resolution 26: In Opposition to Federal Usurpation of State Court Authority as Guaranteed by the United States Constitution* (Jan. 26,

In my view, not all professional responsibility students need to know about all of these global initiatives, or indeed, about any particular initiative. But all students should know that global initiatives exist and that such initiatives have the potential to change U.S. regulation of lawyers. Thus, when they conduct research in the future, they will be on the lookout for global initiatives such as the FATF Gatekeeper Initiative, the GATS, the U.S. free trade agreements, and other global initiatives.

U.S. professional responsibility students also need to know that there may be global implications for issues that they think of as “domestic” U.S. legal ethics issues. One example of a seemingly domestic U.S. issue that had international implications is the Sarbanes Oxley Act, which was passed in the wake of the Enron and other scandals. The rule first proposed by the Securities and Exchange Commission (SEC) included a broad definition of “practicing before the SEC” and would have applied to a significant number of foreign lawyers and law firms.²⁶ The SEC received forty-four comments from foreign parties, including foreign lawyers, U.S. lawyers practicing in foreign countries, and eleven foreign or global bar associations.²⁷ Following these comments, the SEC revised its proposed rule to include fewer foreign lawyers.²⁸ This example is useful for professional responsibility students to see because it illustrates the point that seemingly domestic U.S. legal ethics provisions can affect foreign lawyers and law firms and that U.S. policy may change in response to pressure and complaints from these foreign lawyers.

A second example of a seemingly domestic ethics issue that has international implications is ABA Model Rule of Professional Conduct 5.5 regarding multijurisdictional practice (MJP).²⁹ After the ABA Commission on

2005), *available at* <http://ccj.ncsc.dni.us/IndependenceofStateJudicialSystems/OpposeFederalUsurpationStateCourtAuthority.pdf>. In February 2006, the Conference of Chief Justices adopted two resolutions that address the issue of the ability of Australian and common-law lawyers to be recognized in the U.S. *See* Conference of Chief Justices, Legal Education Resolutions, <http://ccj.ncsc.dni.us/LegalEducationResols.html> (last visited May 25, 2007).

26. Proposed Rule: Implementation of Standards of Professional Conduct for Attorneys, Securities Act Release, 67 Fed. Reg. 71670–71 (proposed Dec. 2, 2002) (to be codified at 17 C.F.R. pt. 205).

27. Final Rule: Implementation of Standards of Professional Conduct for Attorneys, Securities Act Release, 68 Fed. Reg. 6296, 6296 (Feb. 6, 2003) (to be codified at 17 C.F.R. pt. 205). For additional details about the scope of the proposed rule and the nature of the complaints by foreign lawyers and bar associations and U.S. lawyers and firms working outside the U.S., see Terry, *supra* note 1, at 501–05. For one example of a complaint, see COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE, CCBE RESPONSE TO SEC PROPOSED RULE: “IMPLEMENTATION OF STANDARDS OF PROFESSIONAL CONDUCT FOR ATTORNEYS” (Dec. 2002), http://www.ccbe.org/doc/En/ccbe_response_sec_rule_en.pdf.

28. *See* Final Rule: Implementation of Standards of Professional Conduct for Attorneys, Securities Act Release, 68 Fed. Reg. 6296, 6296 (Feb. 6, 2003).

29. MODEL RULES OF PROF’L CONDUCT R. 5.5 (2007).

Multijurisdictional Practice (ABA MJP) received complaints about the exclusively domestic focus of its original mission statement, the ABA revised the mission statement in order to include international issues.³⁰ As a result, several international regulators and commentators testified and sent comments to the ABA Commission.³¹ The ABA ultimately adopted two MJP recommendations that address regulation of foreign lawyers inbound to the U.S.: ABA MJP Recommendation 8 reaffirmed the ABA Model Foreign (Legal) Consultant Rule, and ABA MJP Recommendation 9 created a new Model Rule for Temporary Practice by Foreign Lawyers.³² This example illustrates the point that foreign regulators and lawyers may be concerned about U.S. ethics issues and may participate in the development of U.S. policy. For this reason, it is important for U.S. professional responsibility students to consider the issue of whether and how U.S. legal ethics policy has international implications.

As noted earlier, a third reason why U.S. professional responsibility students should be introduced to global and comparative perspectives is because policies from other countries have the potential to directly or indirectly affect U.S. regulators and lawyers. The European Court of Justice case *AM &*

30. See American Bar Association, Commission on Multijurisdictional Practice of Law, Mission Statement, http://www.abanet.org/cpr/mjp/mjp-mission_statement.html (last visited May 25, 2007) ("The Commission shall also review international issues related to multijurisdictional practice in the United States.").

The original Mission Statement was approved by the ABA Board of Governors in May 2000, and did not include what is now the last sentence of the mission statement which refers to international issues. This last sentence was added to the Mission Statement in October 2000 by the ABA Board of Governors. Email from John Holtaway, ABA Center for Professional Responsibility Staff Member and Counsel to the ABA MJP Commission, to Laurel S. Terry (Jan. 25, 2005) (on file with author). According to MJP Commission member Peter Ehrenhaft, this last sentence was added at the urging of the ABA Section of International Law, which sent a letter to ABA President Martha W. Barnett asking that the mission statement be expanded to include international MJP issues. Email from Peter D. Ehrenhaft, Member, ABA Commission on Practice, to Laurel S. Terry (Feb. 3, 2005) (on file with author).

31. See American Bar Association Commission On Multijurisdictional Practice, Interim Report Written Responses/Comments Mjp Comment Summaries, http://www.abanet.org/cpr/mjp/comm_summ2.html (last visited May 25, 2007) (showing comments from the Law Society of England and Wales, the CCBE, and Union Internationale des Avocats); American Bar Association Commission On Multijurisdictional Practice, Transcript of Chicago Public Hearing (Aug. 3, 2001), http://www.abanet.org/cpr/mjp/mjp-trans_chicago.doc (showing testimony from representatives of the Law Society of England and Wales and the CCBE).

32. AMERICAN BAR ASSOCIATION COMMISSION ON MULTIJURISDICTIONAL PRACTICE, REPORT TO THE HOUSE OF DELEGATES: REPORT 201H (Aug. 1993), <http://www.abanet.org/cpr/mjp/201h.doc> (discussing licensing of legal consultants); AMERICAN BAR ASSOCIATION, COMMISSION ON MULTIJURISDICTIONAL PRACTICE, REPORT TO THE HOUSE OF DELEGATES: REPORT 201J (Aug. 2002), <http://www.abanet.org/cpr/mjp/201j.doc> (discussing temporary practice by foreign lawyers).

*S*³³ is an example of a foreign policy that directly affects U.S. lawyers. *AM & S* addressed the issue of whether *AM & S*, which was a U.K. company under investigation by the European Commission, was entitled to rely on the attorney-client as the basis for refusing to produce documents demanded by the European Commission.³⁴ The documents in question were memos from in-house counsel to company employees; within the U.K., these would be protected documents, but it was unclear whether they were protected from EU-level investigations.³⁵ The European Court of Justice concluded that there was an EU-level attorney-client privilege that could be raised in European Commission proceedings, but that the attorney-client privilege was limited to communications between clients and their outside EU counsel.³⁶ In other words, communications to corporate counsel are not protected, and communications between an EU client and its U.S. lawyer are not protected. This ruling has caused great consternation within the U.S. international law community—among other reasons because it puts U.S. lawyers at a competitive disadvantage.³⁷ The scope of the EU attorney-client privilege has been raised again in the ongoing *Akzo Nobel* case which is being closely followed by many U.S. lawyers.³⁸ Thus, this example illustrates how policy from outside the U.S. may be relevant to U.S. regulators, lawyers, and law firms.

Although *AM & S* is an example of a foreign rule that directly affects U.S. lawyers, U.S. lawyers and regulators can also be indirectly affected by developments that take place outside of the U.S. The ABA Multidisciplinary Practice (MDP) Commission and resulting MDP debates, for example, were driven largely by developments that took place outside the U.S. when the major accounting firms set up law firm branches or departments.³⁹

33. Case 155/79, *AM & S Europe Ltd. v Comm'n of the European Cmty's.*, 1982 E.C.R. 1575. The European Court of Justice is the Supreme Court equivalent for the European Union.

34. *Id.*

35. *Id.*

36. *Id.*

37. I am aware of instances in which ABA members have asked the Office of the United States Trade Representative to raise this point during GATS negotiations.

38. See Case T-125/30 and T-253/03, *Akzo Nobel Chemicals Ltd. and Akcros Chemicals Ltd. v. Comm'n of the European Communities*, 2003 E.C.R. II-4471. This petition was accepted in an order dated Oct. 30, 2003. *Id.* *Akzo Nobel* challenges the validity of the rule in *AM & S*. *Id.* For more information about *Akzo Nobel*, see CCBE, *Akzo Nobel Case*, CCBE-INFO, Jan. 2004, at 4, available at http://www.ccbe.org/doc/Archives/n_07_en.pdf. See also Sue Bentch, *Confidentiality, Corporate Counsel, and Competition Law: Representing Multi-National Corporations in the European Union*, 35 ST. MARY'S L.J. 1003 (2004).

39. For more information on the MDP debate and developments leading up to it, see American Bar Association, Multidisciplinary Practice, <http://www.abanet.org/cpr/mdp/home.html> (last visited May 25, 2007). Information about the developments that gave rise to the creation of the commission is found in the Background Report. See American Bar Association, Commission

Additional developments that have the potential to indirectly affect U.S. regulation of lawyers are the antitrust initiatives occurring around the world. These initiatives include developments in New South Wales (NSW), Australia, and have led to Australia having national practice, MDPs, and public ownership of law firms.⁴⁰ This development also has led to a grant of authority to the NSW Legal Services Commissioner to supervise all NSW law firms and the right to impose law practice management requirements on all law firms in NSW.⁴¹ Other antitrust-driven initiatives include the United Kingdom (U.K.) December 2004 Clementi Committee Report, which has led to pending legislation that, if adopted, would result in dramatic changes to the structure and regulation of lawyers in the U.K.⁴² The U.K. is proposing significant revisions to its regulation of lawyers, including, inter alia, separating the representative and regulatory functions of the bar associations and permitting alternative business structures, including MDPs, and incorporated law practices.⁴³ These antitrust initiatives also include the European Commission's initial Report on Competition in Professional Services and its follow-up report. Relying on a study performed by an Austrian institution, the European Commission concluded that the regulation of lawyers (and five other professions) appeared to be anticompetitive in certain respects; it therefore asked EU member states to examine five types of lawyer regulations and

on Multidisciplinary Practice, Background Paper on Multidisciplinary Practice: Issues and Developments (Jan. 1999), <http://www.abanet.org/cpr/mdp/multicomreport0199.html> (last visited May 25, 2007). For Multidisciplinary Practice (MDP) articles, see American Bar Association, Commission on Multidisciplinary Practice, Additional MDP Papers (Sept. 28, 2004), available at http://www.abanet.org/cpr/mdp/mdp-add_mdp_papers.html (last visited May 25, 2007).

40. See, e.g., Law Council of Australia, National Practice—The Move Towards A National Legal Profession, <http://www.lawcouncil.asn.au/natpractice/home.html> (last visited May 25, 2007); Steven Mark & Georgina Cowdroy, *Incorporated Legal Practices—A New Era in the Provision of Legal Services in the State of New South Wales*, 22 PENN STATE INT'L L. REV. 671 (2004) (describing the MDP and incorporated law practices situation in New South Wales, Australia). Part of the impetus for Australia's recently-completed "National Profession Project" reportedly was pressure from antitrust authorities. *Id.* at 673. Australia recently had its first publicly-traded law firm. See Chris Merritt, *Slater Pays \$2.8m for Military Comp. Firm*, THE AUSTRALIAN, May 29, 2007, at F21.

41. See Email from Steve Mark, Legal Services Commissioner, New South Wales, Australia, to Laurel S. Terry (June 26, 2006) (on file with author) (reporting that his office has been directed to implement law practice management requirements for all NSW law firms).

42. See SIR DAVID CLEMENTI, REVIEW OF THE REGULATORY FRAMEWORK FOR LEGAL SERVICES IN ENGLAND AND WALES (2004), <http://www.legal-services-review.org.uk/content/report/report-chap.pdf> [hereinafter CLEMENTI REPORT]. The Clementi Report was followed by draft legislation. See United Kingdom Department of Constitutional Affairs, Draft Legal Services Bill (May 24, 2006), <http://www.dca.gov.uk/legist/legalservices.htm> [hereinafter U.K. Draft Legal Services Bill].

43. See CLEMENTI REPORT, *supra* note 42, at 105–39; U.K. Draft Legal Services Bill, *supra* note 42. The drafters of the Clementi Report were familiar with the NSW Australia legislation and had communicated with Australian officials. See Email from Steve Mark, *supra* note 41.

satisfy themselves that they were not competitive.⁴⁴ It should be noted that the U.S. Department of Justice has attended Organisation for Economic Co-operation and Development (OECD) meetings with representatives from Australia, the EU, and the U.K.⁴⁵ It should also be noted that the U.S. Department of Justice has occasionally asserted claims that aspects of U.S. state regulation of lawyers are anticompetitive.⁴⁶ One can wonder whether U.S. government antitrust sensitivity (now and in the future) may be heightened as a result of conversations that take place at the OECD and conversations with other regulators who enforce antitrust provisions against the legal profession.

I do not assert that professional responsibility students necessarily need to know the details about these MDP or antitrust developments. But it is important for our future lawyers to realize that because we live in an increasingly smaller world, developments outside the U.S. can influence lawyer regulation within the U.S., even when it does so indirectly, rather than directly. For this reason, in addition to the reasons listed earlier, it is important to introduce global and comparative perspectives into the required professional responsibility course.

44. See EUROPEAN COMMISSION, REPORT ON COMPETITION IN PROFESSIONAL SERVICES 9–10 (Feb. 9, 2004) [hereinafter REPORT ON COMPETITION]; see also EUROPEAN COMMISSION, PROFESSIONAL SERVICES—SCOPE FOR MORE REFORM 4 (Sept. 5, 2005) [hereinafter PROFESSIONAL SERVICES].

45. See ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD), COMPETITION IN PROFESSIONAL SERVICES 2 (Feb. 22, 2000), <http://www.oecd.org/dataoecd/35/4/1920231.pdf> (“This document comprises proceedings in the original languages of a Roundtable on Competition in Professional Services, which was held by the Working Party No. 2 of the Committee on Competition Law and Policy in June 1999.”).

46. Many readers are probably familiar with the Department of Justice’s consent decree against the ABA which expired June 25, 2006. See, e.g., American Bar Association, Section of Legal Education and Admissions to the Bar, Standards: Rules of Procedure for Approval of Law Schools 2005-2006 v (2005) (providing a history of the consent decree); American Bar Association, Statement of Michael S. Greco, President, American Bar Association (June 26, 2006), <http://www.abanet.org/abanet/media/statement/statement.cfm?releaseid=18> (last visited May 25, 2007). What they may not know is that the U.S. Department of Justice has sent a number of letters to state bar associations asserting that various aspects of their proposed definitions of the practice of law are anticompetitive. See, e.g., American Bar Association, Task Force on the Model Definition of the Practice of Law, <http://www.abanet.org/cpr/model-def/home.html> (last visited May 25, 2007); see also U.S. Department of Justice Antitrust Division, Comments, <http://www.usdoj.gov/atr/public/comments/comments.htm> (last visited May 25, 2007).

III. INCORPORATING GLOBAL AND COMPARATIVE PERSPECTIVES INTO THE REQUIRED PROFESSIONAL RESPONSIBILITY COURSE

A. *Introduction*

As this Symposium and other Symposia have demonstrated, there are many useful ideas that one could incorporate when teaching the required legal ethics course.⁴⁷ Part of the difficulty for a professor is finding both course preparation time and class time to incorporate the many useful ideas that one may encounter. This article is intended for professors who teach the required professional responsibility course and who may already feel that there is not enough time to do justice to the material in the course. Despite the constraints that face such professors, I hope that this article will convince the reader of two things. First, I hope that it will convince you that it is worthwhile to incorporate global and comparative perspectives into your professional responsibility course. Second, I hope this article will convince you that it is possible to incorporate these perspectives without taking up very much class time and without requiring very much additional course preparation time.

One could, of course, teach an entire course about global and comparative legal regulation and ethics issues. I teach such a course and highly recommend it.⁴⁸ This article, however, assumes that the reader is teaching the basic course and has only limited time to introduce global perspectives. This article explains how, with a very small course preparation investment and with very little class time—mostly by the use of one-minute “aside” types of comments—one can frequently introduce global perspectives into the course.

In a somewhat nontraditional format, this article is organized according to how much time you are prepared to devote to class preparation of this topic. The subsection that follows identifies one document that you can read and rely upon in order to introduce global and comparative perspectives into the course. The next subsection identifies five additional documents that you can read in order to be able to refer to perspectives endorsed by bar associations from around the world, rather than just Europe. The third subsection identifies a number of sources you can go to in order to locate additional documents that are relevant to the issues in the required professional responsibility course. For all of these items, it is possible to introduce global and comparative perspectives either by a short (one minute) reference to these documents and developments, or by an extended discussion of the contents of these documents. The overwhelming majority of documents I discuss in this article are available to students on the Internet.

47. In addition to this Symposium on “Teaching Legal Ethics,” see Symposium, *Teaching Legal Ethics*, 41 J. LEGAL EDUC. 1 (1991).

48. I am aware of a number of other faculty members who teach such a course.

At this point, I would like to offer several caveats. My first caveat is the observation that this article represents a compromise, and as such, has significant limitations. On the one hand, this article represents my efforts to present global and comparative material that one can introduce into the required professional responsibility course even if one only has available a minimum amount of preparation or class time. On the other hand, there is a wealth of interesting, sophisticated comparative and global material, much of which could form an entire course in itself. I hope I have struck the proper balance in alluding to the wealth of interesting material, while making it seem easy and worthwhile to introduce occasional comparative and global perspectives. If the material seems too simplistic or boring, that represents a shortcoming in my presentation, not a shortcoming in the material itself, which I urge you to consider. My second caveat is to observe that, in this article, I have directed you to the available raw material, but I have not explained in detail how one can incorporate this global and comparative material into class discussions. One reason was space limitations. Moreover, because the likely readers of this Symposium will be experienced professional responsibility teachers, I decided that it was more important to let you know what material was out there rather than to tell you how to use it in your teaching. My final caveat is to point out that this article is heavily weighted towards Europe, rather than the rest of the world. This is not because Europe provides the only source for global and comparative materials. Indeed, even if one retains the English-language orientation, there are a number of non-European materials available on the Internet.⁴⁹ The materials from the EU and the Council of Bars and Law Societies of Europe (CCBE) provide a useful starting point, however, because they address a range of issues and often set forth the differences in approach among CCBE Member and Observer States.⁵⁰ My final caveat concerns something you will *not* be reading in this article. When I first drafted this article, it included a section that identified the global and comparative “annotations” one could offer with respect to selected individual ABA Model Rule provisions.⁵¹ This section was organized according to ABA Model Rule

49. See, e.g., Japan Federation of Bar Associations, <http://www.nichibenren.or.jp/en/> (last visited May 25, 2007) (including a link to English translations of the rules and regulations applicable to Japanese Bengoshi and foreign lawyers practicing in Japan).

50. See Council of Bars and Law Societies of Europe, Members and Observers, http://www.ccbe.org/en/ccbe/membres_en.htm (last visited May 25, 2007).

51. My first draft included “global and comparative annotations” for ABA Model Rules 1.1–1.7, selected portions of Rules 1.8, 1.13, 1.15, 1.16, 2.1, 2.4, 3.1, 3.3, 3.7, 5.4, 5.5, 6.1, 7.1–7.3, and 8.3–8.5. I decided that organizing these annotations numerically by ABA Model Rule number would be the most “user-friendly” method since all professional responsibility professors know when they are covering a particular ABA Model Rule. It seemed difficult to use any other organization method since there are many different professional responsibility course books and many of these books are organized in very different ways. See, e.g., Posting, John Steele to Legal Ethics Forum, http://legalethicsforum.typepad.com/blog/2006/10/professional_re.html (Oct. 22,

number. Because of space limitations, the final draft of this article does not include these annotations for specific rules, but I would be happy to send a copy of my earlier draft to anyone who contacts me by email.⁵²

B. Documents Needed To Prepare for Class

1. If You Only Have Time to Read One Document

If you are interested in introducing global and comparative perspectives into your course, but you only have time to read one document, then I recommend that you begin with the ethics code that was designed to apply to EU lawyers who are engaged in cross-border transactions with one another. This ethics code, which is known as the CCBE Code of Conduct, was prepared by the Council of Bars and Law Societies of Europe (CCBE).⁵³

The CCBE is the officially recognized representative organization for the legal profession in the EU and represents more than 700,000 lawyers.⁵⁴ It consists of thirty-one delegations whose Members are nominated by regulatory bodies of the Bars and Law Societies in the twenty-seven EU Member States and the three member countries of the European Economic Area (Iceland, Liechtenstein, and Norway) and Switzerland.⁵⁵ The CCBE also includes six observer states (Croatia, Former Yugoslav Republic of Macedonia, Montenegro, Serbia, Turkey, and Ukraine).⁵⁶

The CCBE Code of Conduct was first adopted in 1988 and most recently revised in May 2006.⁵⁷ In contrast to the ABA, the CCBE has not made its

2006). After conducting a survey, inter alia, on the legal ethics listserv, John Steele circulated and posted on a blog a list of the "basic" professional responsibility classroom texts. *Id.* His list, which excluded books devoted to a particular practice area or topic and excluded treatises, consisted of twenty-four casebooks. *Id.*

52. My email address is lterry@psu.edu.

53. See COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE, CODE OF CONDUCT FOR EUROPEAN LAWYERS (2006), http://www.ccbe.org/doc/En/2006_code_en.pdf [hereinafter CCBE CODE OF CONDUCT].

54. See Council of Bars and Law Societies of Europe, What is the CCBE?, http://www.ccbe.org/en/accueil/accueil_en.htm (last visited May 25, 2007).

55. See *id.*

56. See Council of Bars and Law Societies of Europe, *supra* note 50.

57. CCBE CODE OF CONDUCT, *supra* note 53. For information about, and a copy of the original 1988 code of conduct, see Laurel S. Terry, *An Introduction to the European Community's Legal Ethics Code Part I: An Analysis of the CCBE Code of Conduct*, 7 GEO. J. LEGAL ETHICS 1 (1993), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=596203. The recent changes to the CCBE Code of Conduct were the result of sometimes vigorous debates by CCBE delegations, but the earlier drafts and these debates are not publicly available. The only legislative history that currently is publicly available is that found in the commentary on various rules that follows the current code provisions. See CCBE CODE OF CONDUCT, *supra* note 53, at 17–30. The CCBE Code of Conduct was also revised in 2002. See *id.* For comments on the 2002 revisions, see Laurel S. Terry, *The Revised CCBE Code of Conduct*, in ROGER GOEBEL &

prior drafts and comments on those drafts publicly available.⁵⁸ Despite the lack of legislative history, there are several reasons why the CCBE Code of Conduct provides a useful resource for introducing comparative perspectives into a professional responsibility course. The CCBE Code is in English, it has rules that appear quite straightforward, and it is much shorter (and thus easier to read) than the ABA Model Rules. The CCBE Code also is useful because it represents efforts to reconcile ethics provisions from civil law and common law countries and from countries that are restrictive and countries that are liberal. Thus, it is illuminating to simply observe where the CCBE has been able to adopt a single, harmonized rule and where it has had to adopt a choice of law approach in which it directs the lawyer to use the law of one of the EU Member States. The accompanying commentary often highlights (in a few short paragraphs) these situations and explains whether there is or is not consensus within the EU with respect to a particular lawyer regulatory measure. Thus, if you have only have time to read one document, I recommend that you go to the CCBE website and print out the May 2006 code.⁵⁹

2. If You Have Time to Read Five Additional Documents

If you have time to read additional documents, then I recommend you read five very short documents that I will refer to collectively as “the international resolutions.” Four of these five documents were prepared by international organizations whose members come from around the world. These documents enable one to introduce global and comparative perspectives that go beyond Europe. One can use these documents as the basis for a one-minute “aside” comment that introduces global or comparative perspectives. On the other hand, some of the content in these documents could be the basis for an extended class discussion.

The first document that I recommend one consult after the CCBE Code of Conduct is the U.N. Basic Principles on the Role of Lawyers (U.N. Basic Principles).⁶⁰ The U.N. Basic Principles were adopted in 1990 at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of

MARY DALY, RIGHTS, LIABILITY AND ETHICS IN INTERNATIONAL LEGAL PRACTICE (forthcoming 2007).

58. *Compare* American Bar Association, Ethics 2000 Commission, <http://www.abanet.org/cpr/e2k/home.html> (last visited May 25, 2007) (including minutes and testimony with a note to researchers about how to obtain prior drafts and comments), *with* Council of Bars and Law Societies of Europe, Deontology Committee, http://www.ccbe.org/en/comites/deonto_en.htm (last visited May 25, 2007) (indicating that no drafts are available).

59. *See* CCBE CODE OF CONDUCT, *supra* note 53.

60. Office of the United Nations High Commissioner for Human Rights, Basic Principles on the Role of Lawyers (Sept. 7, 1990), <http://www.ohchr.org/english/law/lawyers.htm> (last visited May 25, 2007) [hereinafter U.N. Basic Principles].

Offenders in Havana, Cuba.⁶¹ They were adopted as part of the U.N.'s ongoing efforts to implement standards across the globe to ensure the administration of criminal justice.⁶² The scope of this document is wide-ranging, covering the topics of access to lawyers and legal services, special safeguards in criminal justice matters, qualifications and training, duties and responsibilities, government guarantees, freedom of expression and association, professional associations of lawyers, and disciplinary proceedings.⁶³

The second document one should read is the International Bar Association (IBA) Resolution on Deregulating the Legal Profession; this resolution is often referred to by IBA Members as the "Core Values Resolution."⁶⁴ Before reading this document, it may be useful to have some background information about the IBA and the history of this document.

The IBA, together with the *Union Internationale des Avocats* (UIA), is one of the two general-purpose international bar associations.⁶⁵ The IBA tends to be more English-language, common-law oriented than the UIA, which is more French-language, civil-law oriented.⁶⁶ The IBA is headquartered in London, whereas the UIA is headquartered in Paris.⁶⁷ Both of these organizations include as members both bar association and individual lawyers from Africa,

61. *Id.*

62. *Id.*

63. *Id.*

64. IBA Resolution on Deregulating the Legal Profession (1998) [hereinafter Core Values Resolution], available at http://www.ibanet.org/aboutiba/IBA_Resolutions.cfm (scroll to "Resolution Deregulating the Legal Profession"). For a copy of all IBA resolutions, see IBA Resolutions, http://www.ibanet.org/aboutiba/IBA_Resolutions.cfm (last visited May 25, 2007).

Although the IBA has an ethics code that dates from 1988 and another document with a similar name that dates from 1995, there are several reasons why I have not used these documents as one of the five additional documents that I recommend reading. See INTERNATIONAL BAR ASSOCIATION, INTERNATIONAL CODE OF ETHICS (1988), http://www.ibanet.org/images/downloads/international_ethics.pdf. First, in my experience, neither IBA members nor foreign lawyers regularly refer to the IBA Ethics Code, although they do refer regularly to the Core Values Resolution. Second, the IBA currently is in the process of revising its ethics code. Finally, the IBA itself lists a question mark next to its ethics code in one version of its online compendium of IBA policies, rules, and standards. See INTERNATIONAL BAR ASSOCIATION, COMPENDIUM OF IBA STANDARDS, STATEMENTS, RULES, CONCORDAT & RESOLUTIONS 2 (Oct. 2002) (Draft), available at http://www.ibanet.org/images/downloads/Compendium_Index.pdf.

65. See Laurel S. Terry, *Lawyers, GATS, and the WTO Accountancy Disciplines: The History of the WTO's Consultation, the IBA GATS Forum and the September 2003 IBA Resolutions*, 22 PENN STATE INT'L L. REV. 695, 698–99 (2004). But see International Law Association, History of the ILA, http://www.ila-hq.org/html/layout_about.htm (last visited May 25, 2007). Because the ILA does not appear to address lawyer regulatory issues, I have not included it within the group of general purpose bar associations.

66. See Terry, *supra* note 65, at 699 n.6.

67. *Id.*

Asia, Australia, and South America, as well as Europe and North America.⁶⁸ Both the IBA and UIA have extensive websites.⁶⁹

The IBA's "Core Values Resolution" was drafted in response to the GATS negotiations described earlier.⁷⁰ This IBA resolution identifies the following "core values" of the legal profession that WTO governments should strive to protect during the GATS negotiations:

- its role in facilitating the administration of and guaranteeing access to justice and upholding the rule of law,
- its duty to keep client matters confidential,
- its duty to avoid conflicts of interest,
- the upholding of general and specific ethical and professional standards,
- its duty, in the public interest, of securing its independence, professionally, politically, and economically, from any influence affecting its service,
- its duty to the Courts.⁷¹

The IBA Core Values Resolution was approved by the IBA Council, which consists primarily of bar representatives from Africa, Asia, Australia, Europe, North America, and South America.⁷²

68. *Id.*

69. *See* International Bar Association, <http://www.ibanet.org/> (last visited May 25, 2007); Union Internationale des Avocats, <http://www.uianet.org/index.jsp> (last visited May 25, 2007).

70. Core Values Resolution, *supra* note 64. The Core Values Resolution begins:

Having due regard to the public interest in deregulating the legal profession as presently under consideration by the World Trade Organization (WTO) and the Organisation for Economic Co-operation and Development (OECD) with the aim of:

- amending regulations no longer consistent with a globalized economy and
- securing the provision of legal services in an efficient manner and at competitive and affordable prices.

Id. For additional information about the GATS negotiations, see Terry, *supra* note 21; Terry, *supra* note 65.

71. Core Values Resolution, *supra* note 64. After this article was submitted for publication, the IBA adopted another resolution that one might want to add to or substitute for the Core Values Resolution. *See* INTERNATIONAL BAR ASSOCIATION, IBA GENERAL PRINCIPLES OF THE LEGAL PROFESSION (Sept. 20, 2006), available at http://www.ibanet.org/aboutiba/IBA_Resolutions.cfm (select "General Principles of the Legal Profession").

72. International Bar Association, The IBA Council, http://www.ibanet.org/barassociations/IBA_Council_.cfm (last visited May 25, 2007).

The Council's membership comprises up to two representatives (IBA Councillors) of each Member Organisation, the present and immediate past IBA Officers, the three senior Officers of each Division and their immediate past Chairs, Deputy Secretary Generals (DSGs), Chairs of all the IBA Standing Committees, Honorary life members and Honorary life Presidents.

Id.

The third document in this international resolutions group is the UIA's Turin Principles.⁷³ As noted above, the UIA is the second major general-purpose international bar association and has more of a French, civil-law orientation.⁷⁴ The UIA Turin Principles were adopted in 2002 and refer to the U.N. Basic Principles cited above.⁷⁵ The UIA Turin Principles are much more detailed than the IBA's Core Values Resolution and provide much fodder for discussion.

The fourth document in the international resolutions group is the Statement of Core Principles of the Legal Profession.⁷⁶ This document was adopted in November 2005 by approximately one hundred bar presidents from around the world.⁷⁷ ABA President Greco has explained the background of this document as follows:

What happened in Paris, France, on November 19, 2005, at the meeting of close to one hundred bar presidents and leaders from around the world was extraordinary and historic: the unanimous adoption of a simply-worded Statement of Core Principles that clearly informs everyone in the world of (a) what lawyers stand for, the core principles to which the lawyers of the world are committed for the benefit of people everywhere; and (b) the recognition that the legal profession throughout the world is not fragmented, but one—united in its unwavering commitment to those principles that protect the Rule of Law and thus freedom for all people: an independent judiciary, an independent legal profession, and access to justice for all people of the world.⁷⁸

The three core principles in this document are: an independent judiciary, an independent legal profession, and access to justice, which shall not yield to any emergency of the moment.⁷⁹

73. See UNION INTERNATIONALE DES AVOCATS, TURIN PRINCIPLES OF PROFESSIONAL CONDUCT FOR THE LEGAL PROFESSION IN THE 21ST CENTURY (2002) [hereinafter UIA TURIN PRINCIPLES], <http://www.uanet.org/documents/qquia/resolutions/> (scroll to "Professional Conduct for the Legal Profession in the 21st.pdf").

74. See *supra* notes 65–68 and accompanying text.

75. See UIA TURIN PRINCIPLES, *supra* note 73.

76. American Bar Association, *Statement Of Core Principles*, at 3, available at <http://www.abanet.org/intlaw/policy/ruleoflaw/coreprinciples.pdf> (last visited May 25, 2007).

77. See *id.*

78. *Id.* at 5.

79. *Id.* at 2. The Statement in its entirety says:

The legal profession throughout the world, in the interest of the public, is committed to these core principles:

- 1) An impartial, and independent, judiciary, without which there is no rule of law.
- 2) An independent legal profession, without which there is no rule of law or freedom for the people.
- 3) Access to justice for all people throughout the world, which is only possible with an independent legal profession and an impartial, and independent, judiciary.

And that, these core principles shall not yield to any emergency of the moment.

The fifth document in the international resolutions group is the CCBE Charter of Core Principles of the European Legal Profession, which the CCBE adopted at its plenary meeting in November 2006.⁸⁰ Although this document was drafted by the CCBE, it may ultimately have a broader reach than that. This is because the Council of Europe has expressed interest in this document.⁸¹ The Council of Europe had been considering the development of a common code of ethics for lawyers in order to respond to requests it received from Eastern European Bars for European standards on lawyers' ethics.⁸² After hearing about the CCBE project, however, the Council of Europe decided to defer this project while it follows the progress made by the CCBE.⁸³

This article refers to these five documents as "international resolutions." On the one hand, one may question whether these documents are truly international and truly represent the views of lawyers from around the world. It is true that many of the lawyers who attend IBA and UIA meetings may not be representative or typical of the legal professions in their own country. Moreover, it is not always clear to what extent the bar association representatives (including the ABA representative) have consulted with their organizations or members before voting for a resolution at the IBA, UIA, or CCBE meetings. On the other hand, these international resolutions reflect multicultural perspectives and often are the result of debates among lawyers from different countries and different continents.⁸⁴ Thus, if you refer to these documents, you have included the views of at least some African, Asian, Australian, European, and South American lawyers and bar associations who participated in the development of these documents.

3. If You Have Time to Read More Than Five Additional Documents

If you have time to read more than five documents in order to introduce global and comparative perspectives into your professional responsibility

Id.

80. COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE, CHARTER OF CORE PRINCIPLES OF THE EUROPEAN LEGAL PROFESSION (Nov. 2006), available at http://www.ccbe.org/doc/En/en_deonto_charter_core_principles_251106.pdf; see also Council of Bars and Law Societies of Europe, *Development of CCBE Common Principles on Lawyers' Ethics*, CCBE-INFO, May 2006, at 5 [hereinafter *CCBE Common Principles*], available at http://www.ccbe.org/doc/Archives/n_15_en.pdf.

81. The Council of Europe includes the following countries that are not CCBE Members: Albania, Andorra, Armenia, Azerbaijan, Bosnia, and Herzegovina, Georgia, Moldova, Monaco, Russian Federation, San Marino, and Serbia. Compare Council of Bars and Law Societies of Europe, *supra* note 50, with Council of Europe, The Council of Europe's Member States, http://www.coe.int/T/e/com/about_coe/member_states/default.asp (last visited May 25, 2007).

82. See *CCBE Common Principles*, *supra* note 80, at 5.

83. See *id.*

84. In my experience working on three IBA resolutions, lawyers from around the world participate vigorously in the debates and often have significant differences of opinion.

course, then there is a wealth of material waiting for you. This article highlights some of the additional documents that are available, but it has only scratched the surface of the available material.⁸⁵

If you have the time and interest to go beyond the documents cited in the prior subsection, then the first place I recommend consulting is the "Committees" page of the CCBE website.⁸⁶ This webpage currently includes links to fourteen committees and eleven working groups.⁸⁷ On each of these pages, one can find relevant documents and CCBE position papers. These documents provide a wealth of comparative material because the CCBE must set forth and then reconcile the views of its thirty-one members and six observers. The CCBE documents often set forth in fairly concise form, the differences in views and perspectives among these countries.

After you consult the CCBE committee documents, I recommend that you consult the European Commission Report on Competition in Professional Services and the follow-up report and supporting materials.⁸⁸ The European Commission has raised questions about whether the following five areas of European lawyer regulation violate antitrust principles: 1) fees, 2) advertising, 3) qualification (bar admission) requirements, 4) lawyer monopoly rules (also known as "reserved areas"), and 5) alternative business structures, including MDPs and incorporated legal practices.⁸⁹ These reports are relatively short (much shorter than the Clementi Report) but include useful survey information on practices within Europe. Thus, by reading the information, one can learn a tremendous amount about the treatment of these five issues in the EU Member States.

After these two groups of documents, what you read depends on your particular interests; there are a number of options. In addition to the FATF Gatekeeper Initiative, the Australian "incorporated law practices" rules and subsequent law practice management authority, the U.K. Clementi Report, the *Akzo Nobel* case, and the trade agreements described earlier in this article,⁹⁰ some of the items you might consult include:

85. For a listing of additional relevant items, see Table of Contents, in LAUREL S. TERRY, *GLOBAL REGULATION OF LAWYERS: STATUTES AND STANDARDS* (forthcoming), available at <http://www.personal.psu.edu/faculty/l/s/lst3/publications.htm> (select "Table of Contents" from list under heading "Books and Book Chapters") (last visited May 25, 2007).

86. See Council of Bars and Law Societies of Europe, Committees and Working Groups, http://www.ccbe.org/en/ccbe/liste_comites_en.htm (last visited May 25, 2007).

87. *Id.*

88. See REPORT ON COMPETITION, *supra* note 44; see also PROFESSIONAL SERVICES, *supra* note 44.

89. See REPORT ON COMPETITION, *supra* note 44; see also PROFESSIONAL SERVICES, *supra* note 44.

90. See *supra* notes 17–19 and accompanying text (discussing the FATF Gatekeeper Initiative); *supra* note 38 and accompanying text (discussing the *Akzo Nobel* case); *supra* notes 40–41 and accompanying text (discussing the Australian incorporated law practices regime);

1. the “resolutions” pages of the IBA and UIA to see the topics for which these international bar associations have adopted resolutions;⁹¹
2. the code of conduct for lawyers practicing before the International Criminal Court. This code was adopted in December 2005 and was the result of several drafts and numerous comments from international bar associations, including the ABA;⁹²
3. information about the Canadian litigation challenging the application of money laundering provisions to lawyers;⁹³
4. information about money laundering issues in Europe;⁹⁴
5. information from the Council of Europe and the EU regarding the legal aid situation throughout Europe. The types of legal aid schemes in Europe vary significantly: some are funded and operated by the government, whereas others are funded and operated by the bar association; some cover advice and representation in court whereas others cover only court representation; the approach to income restrictions varies, with some using an all-or-nothing approach whereas others require clients to pay for the legal services using a sliding scale based on their income; and some require lawyers to participate whereas other countries make it voluntary;⁹⁵

supra notes 42–43 and accompanying text (discussing the Clementi Report); *supra* notes 21–24 and accompanying text (discussing GATS and other trade agreements).

91. See International Bar Association, IBA Resolutions, http://www.ibanet.org/aboutiba/IBA_Resolutions.cfm (last visited May 25, 2007); Union Internationale des Avocats, Resolutions and Charters, http://www.uanet.org/jsp/qquia/qquia_res.jsp?locale=en (last visited May 25, 2007).

92. Assembly of State Parties, Resolution ICC-ASP/4/Res.1 (Dec. 2, 2005), available at http://www.icc-cpi.int/library/defence/ICC-ASP-4-32_En.pdf; see also Judith McMorow, *Creating Norms of Attorney Conduct in International Tribunals: A Case Study of the ICTY*, 30 B.C. INT'L & COMP. L. REV. 139 (2007).

93. See Federation of Law Societies of Canada, Task Force on Money-Laundering Legislation, <http://www.flsc.ca/en/committees/moneylaundering.asp> (last visited May 25, 2007).

94. See Council of Bars and Law Societies of Europe, *Position of the Council of the Bars and Law Societies of the European Union (CCBE) on the Requirements on a Lawyer to Report Suspicions of Money Laundering and on the European Commission Proposal for a Third EU Directive on Money Laundering Regulations* (Nov. 2004), available at http://www.ccbe.org/doc/En/ccbe_position_paper_money_laundering_%20051104_en.pdf.

95. See, e.g., European Commission, Judicial Atlas in Civil Matters—Legal Aid, Documents, http://ec.europa.eu/justice_home/judicialatlascivil/html/la_docs_en.htm (last visited May 25, 2007). The relevant EU Directive is Council Directive 2003/8/EC of 27 January 2003 to Improve Access to Justice in Cross-Border Disputes by Establishing Minimum Common Rules Relating to Legal Aid for Such Disputes, OJ L/26/41 (Jan. 31, 2003), as corrected by OJ L/32/15 (Feb. 7, 2003); Council of Europe Committee of Ministers, *Resolution 78(8): On Legal Aid and Advice*, in RELEVANT COUNCIL OF EUROPE RESOLUTIONS AND RECOMMENDATIONS IN THE FIELD OF EFFICIENCY AND FAIRNESS OF JUSTICE 5–7 (Sept. 10, 2002).

6. the Edward and Fish Reports comparing the EU common law concepts of privilege with the civil law concept of secrecy and setting forth the confidentiality rules in a number of European countries;⁹⁶ and
7. several recent European Court of Justice cases including:
 - *Wouters v. Algemene Raad van de Nederlandse Orde van Advocaten*, which upheld Belgium's MDP ban, finding that it was reasonable for the Bar to conclude such a ban was necessary in order to protect lawyers' core values;⁹⁷
 - *Manuele Arduino*, in which the European Court of Justice found that Italy's minimum fee schedule did not violate the EU's antitrust provisions;⁹⁸
 - the consolidated cases of *Federico Cipolla v. Rosaria Fazari*⁹⁹ and *Stefano Macrino and Claudia Capodarte v. Roberto Meloni*,¹⁰⁰ in which the Court concluded that Italy's minimum fee schedule did not violate the EU's antitrust provisions, that these rules did violate the EU's freedom of services provision when applied to non-Italian EU lawyers,¹⁰¹ but that it was up to the national courts to determine whether the restrictions were warranted.

These examples are just a few of the global and comparative items one could refer to when teaching subjects covered in the required professional responsibility course. They illustrate, however, the range of available materials.

C. Keeping Track of Global Legal Ethics Developments

For those interested in monitoring global developments, there are some easy ways to do so. Both the CCBE and the Law Society of England and Wales prepare quarterly free newsletters; they are posted on their websites, but

96. See D.A.O. EDWARD, THE PROFESSIONAL SECRET, CONFIDENTIALITY AND LEGAL PROFESSIONAL PRIVILEGE IN THE NINE MEMBER STATES OF THE EUROPEAN COMMUNITY (Oct. 1976), available at http://www.ccbe.org/doc/En/edward_en.pdf; COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE, THE PROFESSIONAL SECRET, CONFIDENTIALITY AND LEGAL PROFESSIONAL PRIVILEGE IN EUROPE: AN UPDATE ON THE REPORT BY D.A.O. EDWARD (Sept. 2003), available at http://www.ccbe.org/doc/En/update_edwards_report_en.pdf.

97. See Case C-309/99, *Wouters v. Algemene Raad van de Nederlandse Orde van Advocaten*, 2002 E.C.R. I-1577. For additional commentary on this case, see Laurel S. Terry, *MDPs, "Spinning," and Wouters v. Nova*, 52 CASE W. L. REV. 867 (2002).

98. Case C-35/99, *Manuele Arduino*, 2002 E.C.R. I-1529.

99. Case C-94/04, *Federico Cipolla v. Rosaria Fazari* (née Portolese), (Reference for a preliminary ruling from the Corte d'appello di Torino (Italy)), Dec. 5, 2006.

100. Case C-202/04, *Stefano Macrino and Claudia Capodarte v. Roberto Meloni* (Reference for a preliminary ruling from the Tribunale di Roma (Italy)), Dec. 5, 2006.

101. Case C-94/04 & Case C-202/04, JUDGMENT OF THE COURT, 5 Dec. 2006, [2007] 4 C.M.L.R. 8.

one can also sign up for an email subscription.¹⁰² Both of these newsletters include a table of contents so that in less than five minutes, one can determine whether there are any new developments of interest.

IV. CONCLUSION

It is important for students in the required professional responsibility course to be exposed to global and comparative perspectives. These students need to understand that because of the dramatic increase in international trade and U.S. immigration, their business clients themselves may do business outside the U.S., or their business clients may be involved in a business deal with someone from outside the U.S., or their individual clients may have matters or ties with another country. As a result, future U.S. lawyers are increasingly likely to encounter foreign lawyers who operate under different norms and rules. Moreover, it is increasingly difficult to tell the home country of large law firms since they have offices around the world and employ lawyers from around the world. Thus, U.S. law students who work for these firms (or encounter lawyers who work for these firms) are increasingly likely to interact with foreign lawyers. It is also true that U.S. regulators are increasingly likely to be aware of developments elsewhere in the world when developing policy regarding U.S. lawyers. U.S. regulators are also increasingly likely to need to take into account the implications of their policies on foreign lawyers. For all of these reasons, it is important for professional responsibility professors to incorporate global and comparative perspectives into their courses.

In an effort to help turn good intentions into action, this article has identified specific documents that one can read and use in order to introduce global and comparative perspectives. As this article explains, one can introduce global and comparative perspectives even if you only read a single document—the CCBE Code of Conduct. If you are willing to read an additional five documents (all of which are short), one can expand the global and comparative perspectives to include international resolutions that have been debated by lawyers from around the world. Finally, this article has identified a number of sources one can consult to learn about additional global developments.

102. See Council of Bars and Law Societies of Europe, CCBE-Info, http://www.ccbe.org/en/news/news_en.htm (last visited May 25, 2007); Law Society of England and Wales, International Highlights, <http://www.lawsociety.org.uk/newsandevents/newsletters/international.law> (last visited May 25, 2007). Subscription information about additional newsletters is available at Laurel Terry, Global Legal Practice Resources Webpage, <http://www.personal.psu.edu/faculty/l/s/lst3/globalprac.htm> (last visited May 25, 2007).

One can spend as much—or as little—class time on these global initiatives as one wants. In my view, however, it is important to introduce students to these initiatives and differing perspectives, even if one only does so through an occasional one-minute “aside” comment.

After all, it is important for students to learn that “we are not alone.”

